May 13 Remitted Davis

Rec'd

SUPREME COURT OF THE UNITED STATES.

No. ~~170.~~ 96.

EVANS ROGERS, PLAINTIFFS IN ERROR,

vs.

THE CITY OF BURLINGTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 170.

EVANS ROGERS, PLAINTIFFS IN ERROR,

vs.

THE CITY OF BURLINGTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

INDEX.

	Original.	Print.
Pleas	1	1
Declaration	2	1
Copy of bond "A"	29	10
Coupons	30	10
Demurrer to petition	31	11
Judgment	33	12
Bill of exceptions	35	12
Demurrer	35	12
Clerk's certificate	39	13
Writ of error	40	13
Appeal bond	45	14
Citation and service	49	15

Declaration or petition.

UNITED STATES OF AMERICA,
District of Iowa:

Pleas before the circuit court of the United States at a term begun and holden at Des Moines, in the district of Iowa, on the second Tuesday, it being the 12th day of May, A. D. 1863, before the Hon. Samuel F. Miller, circuit judge, and Hon. James M. Love, district judge.

EVANS ROGERS
vs.
THE CITY OF BURLINGTON.

Be it remembered, that on the twenty-third day of March, 1863, a petition was filed in the office of the clerk of the said circuit court, in and for the district of Iowa, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Iowa:

Circuit court of the United States for the district of Iowa.

EVANS ROGERS
vs.
THE CITY OF BURLINGTON.

2 To the circuit court of the United States for the district of Iowa:

1ST COUNT.—Your petitioner, Evans Rogers, a citizen of the State of Pennsylvania, claims of the defendant, the city of Burlington, a municipal and political corporation, created and existing under and by virtue of the laws of the State of Iowa, and a citizen of said State of Iowa, the sum of eight thousand dollars, which he alleges to be due him from the said defendant. And for cause of such claim he states that heretofore, to wit, on the first day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June twenty-third, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June tenth, A. D. 1845, did, by its certain promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number "31," promise to pay to ——— ——— the sum of one thousand dollars on the first day of August,
3 A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the said several coupons were, respectively, February first, A. D. 1860, August first, 1860, February first, 1861, August first, 1861, February first, 1862, August first, 1862, and February first, 1863.

That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

2D COUNT.—And your petitioner further states that heretofore, to wit, on

the first day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general
4 assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did, by its certain other writing obligatory, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number "32," promise to pay to bearer the sum of one thousand dollars on the 1st day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of said note
5 and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

3D COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number "33," promise to pay to bearer the sum of one thousand dollars on the first day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of the said promissory note, among others, were the seven, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city
6 of New York, forty dollars at a date therein named; which said several dates in the said several coupons were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

4TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10, A. D. 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of

August, A. D. 1856, and numbered on the margin number "34," promise to pay to bearer the sum of one thousand dollars on the 1st day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and Feb-
7 ruary in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

5TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, 1845, did, by its certain
8 other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number 35, promise to pay to bearer the sum of one thousand dollars on the 1st day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereto has been often demanded of defendant.

9 6TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number 36, promise to pay to bearer the sum of one thousand dollars on the first day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from date the thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

7TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number 37, promise to pay to bearer the sum of one thousand dollars on the first day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place designated.

That attached thereto, and forming a part of said promissory note, among others, were the certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

8TH COUNT.—And your petitioner further states that heretofore, to wit, on the first day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number 38, promise to pay to bearer the sum of one thousand dollars on the first day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

9TH COUNT.—And your petitioner further states that heretofore, to
13 wit, on the first day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number 39, promise to pay to bearer the sum of one thousand dollars on the 1st day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from date thereof, at the rate of eight per cent. per annum, payable semi annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars, at a date therein named, which said several dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863.

14 That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

10TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of ordinance number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number 40, promise to pay to bearer the sum of one thousand dollars on the first day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated. That attached thereto, and forming a part of the said promisory note, among others, were the seven
15 certain coupons, by each of which the said city of Burlington promised to pay to the bearer at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date thereon named; which said several dates in the several coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863. That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

11TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general

assembly of the Territory of Iowa, approved June 10th, 1845, did, by its certain other promisory note, sealed with the corporate seal of the said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number 46, promise to pay to bearer the sum of one thousand dollars on the first day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per
16 annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated. That attached thereto, and forming a part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the several coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863. That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

12TH COUNT.—And your petitioner further states that heretofore, namely, on the first day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did, by
17 its certain other promissory note, sealed with the corporate seal of the said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin numbered 47, promise to pay to bearer the sum of one thousand dollars on the first day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed, at the place therein designated. That attached thereto, and forming a part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863. That your petitioner has become the holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

18 13TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number 48, promise to pay to bearer the sum of one thousand dollars on the 1st day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the

principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated. That attached thereto, and forming part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., forty dollars at a date therein
19 named; which said several dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863. That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

14TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did, by its certain other promissory note, sealed with the corporate seal of the said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number 49, promise to pay to bearer the sum of one thousand dollars on the 1st day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from date thereof, at the rate of eight per
20 cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated. That attached thereto, and forming a part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the several said coupons, as numbered herein, were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863. That your petitioner has become the owner and holder of said note and coupons, and that the said several coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

15th COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did, by its
21 certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said 1st day of August, A. D. 1856, and numbered on the margin number 50, promise to pay to bearer the sum of one thousand dollars on the first day of August A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the said several coupons, as numbered herein, were, respectively, Feb-

ruary 1st, 1860; August 1st, 1860; February 1st, 1861; August 1st, 1861; February 1st, 1862; August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of said note and
22 coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of said defendant.

16TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said first day of August, A. D. 1856, and numbered on the margin number 51, promise to pay to bearer the sum of one thousand dollars on the 1st day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the 1st days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of the said promissory notes,
23 among others, were the seven certain coupons, by each of which the city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860; August 1st, 1860; February 1st, 1861; August 1st, 1861; February 1st, 1862; August 1st, 1862; February 1st, 1863.

That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

17TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said 1st day
24 of August, A. D. 1856, and numbered on the margin number 52, promise to pay to ——— the sum of one thousand dollars on the 1st day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of said promissory, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860; August 1st, 1860; February 1st, 1861; August 1st, 1861; February 1st, 1862; August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

25 18TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city

of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said 1st day of August, A. D. 1856, and numbered on the margin number 53, promise to pay to bearer the sum of one thousand dollars on the 1st day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first days of August and February in each year until the princip. sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of the said promissory note, among others, were seven certain coupons, by each of which the said city of Burlington promised to pay to bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named; which said several
26 dates in the said several coupons, as numbered herein, were, respectively, February 1st, 1860; August 1st, 1860; February 1st, 1861; August 1st, 1861; February 1st, 1862; August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

19TH COUNT.—And your petitioner further states that heretofore, to wit, on the 1st day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did, by its certain other promissory note, sealed with the corporate seal of said city, subscribed by the mayor, and attested by the recorder thereof, and dated said 1st day of Agust, A. D. 1856, and numbered on the margin number 54, promise to pay to bearer the sum of one thousand dollars on the 1st day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of New York, with interest thereon from the date thereof at the rate of eight per cent.
27 per annum, payable semi-annually, on the 1st days of August and February in each year, until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at the place therein designated.

That attached thereto, and forming a part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars, at a date therein named; which said several dates in the said several coupons were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of the said note and coupons, and that the said seven several coupons are due and unpaid to your petitioner, although payment has been of demanded of defendant.

20TH COUNT.—And your petitioner further states that heretofore, to wit, on the first day of August, A. D. 1856, the said defendant, the city of Burlington, in pursuance of an ordinance, number forty-four, passed June 23d, A. D. 1856, by the city council of said city, under authority of an act of the general assembly of the Territory of Iowa, approved June 10th, A. D. 1845, did by its certain other promissory note, sealed with the corporate seal of said city,
28 subscribed by the mayor and attested by the recorder thereof, and dated said 1st day of August, A. D. 1856, and numbered on the margin number 55, promise to pay to bearer the sum of one thousand dollars, on the 1st day of August, A. D. 1876, at the office of E. W. Clark, Dodge & Co., in the city of

New York, with interest thereon from the date thereof at the rate of eight per cent. per annum, payable semi-annually, on the first days of August and February in each year, until the principal sum shall be paid, on presentation of certain interest coupons thereto annexed at a place therein designated.

That attached thereto, and forming a part of the said promissory note, among others, were the seven certain coupons, by each of which the said city of Burlington promised to pay to the bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, forty dollars at a date therein named, which said several dates in the said several coupons as numbered herein were, respectively, February 1st, 1860, August 1st, 1860, February 1st, 1861, August 1st, 1861, February 1st, 1862, August 1st, 1862, and February 1st, 1863.

That your petitioner has become the owner and holder of said note and coupons, and that the said several seven coupons are due and unpaid to your petitioner, although payment thereof has been often demanded of defendant.

29 That a copy of one of said bonds, with the coupons sued on, is a copy of all of them, and that such copy is hereto attached and marked "A."

He therefore prays judgment for said sum, with interest and costs of suit.

By S. V. WHITE,
His Attorney.

Copy of bond.

"A."

1856. The city of Burlington, Iowa. 1856.

Bond No. 50.—One thousand dollars, issued by the city of Burlington, under ordinance No. 44.

To authorize a loan of city bonds, to the amount of $75,000, to the Burlington and Missouri River Railroad Company.

Twenty years after date the city of Burlington, in the State of Iowa, promise to pay to bearer, at the office of E. W. Clark, Dodge & Co., in the city of New York, one thousand dollars for value received, without defalcation, with interest at the rate of eight per cent. per annum, payable semi-annually at the same place, on the 1st days of August and February in each year, upon presentation of the coupons severally hereto annexed, until the payment is

30 well and truly made of the said principal sum of one thousand dollars.

In witness whereof, and in pursuance of ordinance No. 44 of said city, entitled "An ordinance to authorize a loan of city bonds to the amount of seventy-five thousand dollars to the Burlington and Missouri Railroad Company," the mayor of said city hereto sets his hand and causes the corporate seal of said city to be affixed, and the recorder of said city countersigns the same at the city aforesaid, this 1st day of August, A. D. eighteen hundred and fifty-six.

[SEAL.]

D. Q. SALES, *Recorder.*
J. L. CORSE, *Mayor.*

Coupon.

The city of Burlington will pay on the 1st day of February, 1863, $40 on this coupon at the office of E. W. Clark, Dodge & Co., in the city of New York.

J. L. CORSE, *Mayor.*

Coupon.

The city of Burlington will pay on the 1st day of February, 1860, $40 on this coupon at the office of E. W. Clark, Dodge & Co., in the city of New York.

J. L. CORSE, *Mayor.*

31 *Coupon.*

The city of Burlington will pay on the 1st day of August, 1860, $40 on this coupon at the office of E. W. Clark, Dodge & Co., in the city of New York.
J. L. CORSE, *Mayor.*

Coupon.

The city of Burlington will pay on the 1st day of February, 1861, $40 on this coupon at the office of E. W. Clark, Dodge & Co., in the city of New York.
J. L. CORSE, *Mayor.*

Coupon.

The city of Burlington will pay on the 1st day of August, 1861, $40 on this coupon at the office of E. W. Clark, Dodge & Co., in the city of New York.
J. L. CORSE, *Mayor.*

Coupon.

The city of Burlington will pay on the 1st day of February, 1862, $40 on this coupon at the office of E. W. Clark, Dodge & Co., in the city of New York.
J. L. CORSE, *Mayor.*

Coupon.

The city of Burlington will pay on the 1st day of August, 1862, $40 on this coupon at the office of E. W. Clark, Dodge & Co., in the city of New York.
J. L. CORSE, *Mayor.*

31 And afterward, to wit, on the 14th day of May, A. D. 1863, it being of the May term of the said court, a demurrer was filed by the said defendant in the words and figures following, viz:

Demurrer to petition.

In the circuit court of the U. S., district of Iowa.

EDWARD ROGERS
vs.
THE CITY OF BURLINGTON. } Demurrer.

Now comes the defendant, and as to plaintiff's petition, says that the same is insufficient in law to enable plaintiff to maintain his said action, and for cause of demurrer sets down the following:

1st. Said petition does not aver nor show that said city had any power or authority to issue the bonds in plaintiff's petition described.

2d. Said bonds on their face show that they were not issued for any municipal purpose, but were issued as a loan of the credit of the city of Burlington to the Burlington and Missouri River Railroad Company, which is not
32 for a municipal, and said petition contains no averment that said bonds were for a municipal purpose, and shows no legal authority from the legislature of the State of Iowa to said city to issue said bonds.

3d. There is no law of the State of Iowa authorizing or empowering said city to issue said or such bonds, or to loan her credit to any railroad company.

4th. Said petition neither pleads nor sets forth any private or local act of the legislature of the State of Iowa, authorizing or empowering said city to issue such bonds, nor to loan the credit of said city to any railroad company.

5th. Said petition does not aver nor show that said loan was for the benefit of said city, nor that any consideration passed for said loan, nor that the proceeds of said loan went to be applied to any municipal purpose, nor to any

33 purpose authorized by the charter of said city or by the laws of the State of Iowa.

6th. The facts set up in plaintiff's petition do not constitute any cause of action.

Hearing and judgment.

And afterwards, on the same 22d day of May, 1863, the following order and entry was made in the cause aforesaid:

EVANS ROGERS
v.
THE CITY OF BURLINGTON.

This cause now coming on to be heard upon the defendant's demurrer to the petition of the plaintiff, the plaintiff appears by S. V. White, esq., his attorney, and the defendant by Chs. H. Phelps, esq., her attorney, and the said demurrer being seen, and the arguments of counsel heard, it is considered by the court that the demurrer be sustained, and the plaintiff electing to abide by his petition, it is ordered that the defendant go hence without day, and that
34 she recover of the plaintiff the costs of this cause, taxed at $.

Thereupon comes the plaintiff and tenders his bill of exceptions, which is signed by the judge, and is filed in the records of the cause.

The plaintiff also comes and files his complaint and sues out a writ of error to the Supreme Court of the United States, according to the statute in such case made and provided, and files a copy of the same for the defendant in error.

The plaintiff further tenders his supersedeas bond, the penalty of which is fixed at two hundred dollars, and the said bond, with the surety therein, S. V. White, by the order of the court, is approved, and the said bond is filed, and the proper citation to the defendant is signed by the judge of the court.

Bill of exceptions filed by the plaintiff.

35 EVANS ROGERS
v.
THE CITY OF BURLINGTON.

Be it remembered, that at a term of the circuit court of the United States for the district of Iowa, begun and holden at Des Moines, in said district, on Tuesday, the 12th day of May, A. D. 1863, present the Hon. Sam'l F. Miller, holding said court, there came on to be heard the certain cause wherein Evans Rogers was plaintiff, and the city of Burlington was defendant, and thereupon came the said defendant, by Ch's H. Phelps, its attorney, and filed a demurrer to the petition of the plaintiff in the said cause, in these words, to wit:

Copy of demurrer.

In the circuit court of the U. S., district of Iowa.

EVANS ROGERS
v.
THE CITY OF BURLINGTON. } Demurrer.

Now comes the defendant, and as to plaintiff's petition says that the
36 same is insufficient in law to enable plaintiff to maintain his said action, and for cause of demurrer sets down the following:

1st. Said petition does not aver or show that said city had any power or authority to issue the bonds in plaintiff's petition described.

2d. Said bonds, on their face, show that they were not issued for any municipal purpose, but were issued as a loan of the credit of the city of Burlington to the Burlington and Missouri River Railroad Company, which is not for a

municipal purpose, and said petition contains no averment that said bonds were for a municipal purpose, and shows no legal authority from the legislature of the State of Iowa to said city to issue said bonds.

3d. There is no law of the State of Iowa authorizing or empowering said city to issue said or such bonds, or to loan her credit to any railroad company.

4th. Said petition neither pleads nor sets forth any private or local act of the legislature of the State of Iowa authorizing or empowering said city to issue such bonds, nor to loan the credit of said city to any railroad company.

37 5th. Said petition does not aver nor show that said loan was for the benefit of said city, nor that any consideration passed for said loan, nor that the proceeds of said loan were to be applied to any municipal purpose, nor to any purpose authorized by the charter of said city, or by the laws of the State of Iowa.

6th. The facts set up in plaintiff's petition do not constitute any cause of action.

And thereupon the said demurrer came on to be heard, and the court, upon argument of counsel and due deliberation, sustained said demurrer; and to the ruling thereon the plaintiff, by counsel, excepted at the time.

And afterward, the plaintiff having elected to abide by his petition, the court rendered the judgment that the plaintiff take nothing by his plaint, and that the defendant go hence without day. To which also the plaintiff excepted at the time.

And thereupon came the plaintiff, by his counsel, and prayed the court to grant, sign, and enrol this his bill of exceptions; and it is so ordered by

38 the court this the 22d day of May, A. D. 1863.

SAM'L F. MILLER, [SEAL.]
Presiding Judge.

39 UNITED STATES OF AMERICA,
District of Iowa:

I, William G. Woodward, clerk of the circuit court of the United States in and for the district of Iowa, hereby certify that the foregoing thirty-nine pages of writing constitute a full, true, and complete transcript of the record and proceedings in the above-named cause of Evans Rogers *v.* The city of Burlington, as they now remain of record in my office.

In testimony whereof I have hereto set my hand and affixed the seal
[SEAL.] of the said circuit court, at Des Moines, this day of , A. D. 1863.

W. G. WOODWARD,
Clerk of the said Circuit Court.

Costs:

Clerk C. C.	$9 95
Att'y fee,	10 00
Marshal's fee,	13 00
	$32 95

40 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the ninth circuit and district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between Evans Rogers and the city of Burlington, a manifest error hath happened, to the great damage of the said Evans Rogers, as by his complaint appears, and it being fit that the

error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this
41 writ, so that you have the same at Washington on the seventh day of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 22d day of May, in the year of our Lord 1863, and of the independence of the United States the 87th.

Attest: W. G. WOODWARD,

[SEAL.] *Clerk of the Circuit Court of the United States in and for the district of Iowa, with the seal of the said court hereto affixed.*

42 In obedience to the foregoing writ of error, I have hereunto attached a full and perfect transcript of the records, proceedings, and papers in the above-named cause of Evans Rogers against the city of Burlington, and return the same to the said Supreme Court of the United States.

Witness my hand and the seal of the circuit court of the United
[SEAL.] States in and for the district of Iowa, at Des Moines, this 15th day of August, A. D. 1863.

W. G. WOODWARD,
Clerk of the said Circuit Court.

43 In the circuit court U. S.

EVANS ROGERS
vs.
THE CITY OF BURLINGTON } Original writ of error.

Filed in circuit court U. S. for Iowa, this 22d May, 1863.

W. G. WOODWARD, *Clerk.*

44 Supreme Court of the United States.

EVANS ROGERS
vs.
THE CITY OF BURLINGTON. } In error.

Know all men by these presents, that we, Evans Rogers, of Philadelphia, Pennsylvania, as principal, and Stephen V. White, of Des Moines, Iowa, as surety, are held and firmly bound unto the above-named city of Burlington in the penal sum of two hundred dollars, to be paid to the said city of Burlington, to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 22d day of May, A. D. 1863.

Whereas the above-named Evans Rogers hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment ren-
45 dered in the above-entitled suit by the circuit court of the United States for the ninth circuit and district of Iowa:

Now, therefore, the condition of this obligation is such, that if the above-named Evans Rogers shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Sealed and delivered in presence of—

EVANS ROGERS. [SEAL.]
S. V. WHITE. [SEAL.]

Approved by order of the circuit court of the United States for the district of Iowa, this 22d May, 1863.

Attest: W. G. WOODWARD,

[SEAL.] *Clerk of the said Court, with the seal thereof affixed.*

46 Supreme Court U. S.

EVANS ROGERS
vs.
THE CITY OF BURLINGTON. } Cost bond.

Filed May 22d, 1863.

W. G. WOODWARD, *Clerk C. C.*

Supreme Court of the United States.

47 EVANS ROGERS, plaintiff in error,
vs.
THE CITY OF BURLINGTON, defendant in error.

Evans Rogers, a citizen of the State of Pennsylvania, now here, comes and complains that in a certain cause wherein he was late plaintiff in the circuit court of the United States within and for the district of Iowa, and wherein the city of Burlington, a municipal corporation, existing under and by virtue of the laws of Iowa, and a citizen of the State of Iowa, was defendant, material error to his injury hath accrued, in the judgment of said circuit court, in this, to wit:

1st. The court erred in sustaining the demurrer of the defendant to plaintiff's petition.

2d. The court erred in rendering final judgment in favor of defendant.

Wherefore, that the alleged errors may be inquired of and corrected

48 by this court, he prays a writ of error to said circuit court, and that upon return thereto and the inspection of the record therein, the said errors may be inquired of and corrected. By

S. V. WHITE,
Attorney for Plaintiff in Error.

49 UNITED STATES OF AMERICA, *ss:*

To the City of Burlington, greeting: You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and district of Iowa, wherein Evans Rogers is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel F. Miller, one of the justices of the said Supreme Court of the United States, this 3d day of August, in the year of our Lord 1863.

SAMUEL F. MILLER,
Associate Justice of the Supreme Court of the United States.

50 Due and legal service of this citation admitted on this November 26th, 1863, by the undersigned, attorney for the defendant in error, the city of Burlington.

CHAS. H. PHELPS,
Defendant's Attorney.

Filed December 7, 1863.

In the Supreme Court of the United States.

EVANS ROGERS, pl'ff in error,
vs.
THE CITY OF BURLINGTON.

Inasmuch as the transcript in this cause does not contain any copy of the printed indorsements on the bonds in controversy, now, for the purpose of presenting the question of the validity of the bonds fully to the court, it is agreed by and between the parties to this cause that on the back of each of the said bonds is printed section No. 27 of the charter of the city of Burlington, in words and figures following, to wit:

"SEC. 27. That whenever in the opinion of the city council it is expedient to borrow money for any public purpose, the question shall be submitted to the citizens of Burlington, the nature and object of the loan shall be stated, and a day fixed for the electors of the said city to express their wishes; the like notice shall be given as in cases of an election; the loan shall not be made unless two-thirds of all the votes polled at such election shall be given in the affirmative."

And that there is also printed on the back of each of said bonds, ordinance No. 44 of said city, under and by virtue of which said bonds were issued, in words and figures following, to wit:

"*Ordinance No.* 44.

"An ordinance to authorize a loan of city bonds to the Burlington and Missouri River Railroad Company, &c.

"Whereas at a meeting of the city council of the city of Burlington held on the 19th day of May, A. D. 1856, a resolution was adopted authorizing the mayor of said city to call an election and to submit the question whether or not the city issue and lend to the Burlington and Missouri River Railroad Company seventy-five thousand dollars in the bonds of said city, said bonds made payable in twenty years from date of issue, and with an interest of ten per centum per annum, payable semi-annually, and said loan to be secured by the first-mortgage bonds of said company on the second section of the road of said company; and whereas said election was duly and legally held on the second day of June, A. D. 1856, and said question was legally decided in favor of the same, whereby said loan is duly authorized to be made, Therefore—

"*Be it ordained by the city council of the city of Burlington*, 1st. The bonds of said city, to the extent of seventy-five thousand dollars, and in such amounts as the mayor may direct, bearing interest and payable as aforesaid, and duly signed sealed and authenticated, and with coupons for interest, be issued by said city.

"2d. That the mayor execute with said company a contract of loan

thereof, taking therefor the obligation of said company, and as collateral security therefor the mortgages aforesaid, and deliver said bonds to said company and receive said mortgages.

"Attest: D. J. SALES, *Recorder.*

"Passed June 23d, 1856.

"J. L. CORSE, *Mayor.*"

And it is further agreed that the clerk of the Supreme Court of the United States shall cause this agreement to be printed as a part of the transcript of said cause, and that the same shall have the same force and effect as if contained in the original record of said cause.

CLEMENT H. PHELPS, *Att'y for Def'ts.*
S. O. WHITE, *Att'y for Pl'ffs in Error.*

November 23d, 1865.
Filed 15th Dec., 1855.

Supreme Court of the United States.

DECEMBER TERM, 1865.

EVANS ROGERS, PLAINTIFF IN ERROR,

Against

THE CITY OF BURLINGTON, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

BROWNING & EWING FOR DEFENDANT IN ERROR.

Jos. L. Pearson, printer, 511 Ninth street.

North River Insurance Co. vs. Lawrence, 3 Wend., 485.

15 Johns., 383.

Kyd on Corp., 70.

Angell & Ames on Corp., § 111, 256, 280.

Zabrieskie vs. Cleveland, Columbus & Cincinnati Railroad Co., 23 How., 398.

Minturn vs. Lane *et als.*, 23 How., 486.

Moran vs. Comm'rs of Miami County, 2 Black, 723.

2. And all persons dealing with a corporation are bound to take notice of the extent of its powers. They are bound, at their peril, to know whether the corporation has competent authority to make the contract.

Comm'rs of Knox County vs. Aspinwall, 21 How., 543.

The Royal British Bank vs. Turquand, 6 Ellis & Blackburn, 327.

Meyer vs. Muscatine, 1 Wal., 393.

Broughton vs. Salford Water Works, 3 B. & A., 1.

Welland Canal Co. vs. Hathaway, 8 Wend., 485.

3. It is a further well settled rule of English and American law that every corporation is *limited as to its powers, by the objects to be accomplished*—to the sphere of action prescribed by its charter.

Angell & Ames on Corp., § 111, 257, 258.

Ohio Life Ins. & Trust Co. vs. The Merchants' Ins. & Trust Co., 11 Humph., 19.

Broughton vs. Salford Water Works.

Beatty vs. Lessee of Knowler, 4 Pet., 169, 171.

Smith vs. The Alabama Life Ins. & Trust Co., 4 Ala. Rep., 561.

New York Fire Ins. Co. vs. Ely, 2 Cow., 699.

4. And these principles are as applicable to public as to private corporations—to municipal as to commercial.

Newling vs. Francis, 3 D. & E., 198.

The King vs. Passmore, 3 D. & E., 242.

5. And the powers of a corporation can never be extended, by implication, beyond the objects of its creation.

If a clause of its charter be susceptible of two constructions, one limiting it to the purposes of its creation, and the other extending its powers to objects foreign to the general scope of its charter, the former is to be adopted.

Perrine vs. Chesapeake & Delaware Canal Co., 9 How., 185.

Moran vs. Knox County, 2 Black, 723.

6. And if a corporation exceeds its powers, and makes contracts, and issues evidences of indebtedness, not authorizied by its charter, such contracts and evidences of indebtedness are void, and cannot be enforced against the corporation.

Angell & Ames on Corp., § 265, 270

Root vs. Goddard, 3 McLean, 102.

Atto. Genl. vs. Life & Fire Ins. Co., 9 Paige, 476.

Bank of Chillicothe vs. Dodge, 8 Barb, Sup. Ct. Rep., 233.

7. But, even if it were admitted that the city of Burlington had authority to borrow money for other objects than those pertaining to the good order and government of the city, such admission would not uphold these bonds. These were issued on *a contract of lending—not of borrowing.* It was a loan of the credit of the city to a railroad corporation, for an object utterly foreign to the purposes for which the city was incorporated.

Power given to a corporation to *borrow* money, does not include the power *to lend* either its money or its credit.

Coleman vs. Eastern Counties Railway Co., 10 Beavan's, Chy. Rep., 1 to 14.

The Caledonian Railway Co. vs. The Hellensburg Harbor Trustees, 39 Eng. L. and E. Rep., 28.

Angell & Ames on Corp., § 258, 271.

Smith vs. The Alabama Life Ins. & Trust Co., 4 Ala. Rep., 561.

8. The cases on county and city bonds heretofore considered by this court have been decided against the corporations resisting payment, mainly on the ground that they were estopped from making the defences which they sought to interpose.

This was the case in Knox County vs. Aspinwall.
Moran vs. Miami County.
Bissell vs. City of Jeffersonville.
Mercer County vs. Hackett.
Gelpcke vs. City of Dubuque, and others before cited.

In none of these cases, however, was it a question of *power*; but, whether a power, *admitted to exist*, had been executed with technical precision; and in all of them the bonds recited that the requirements of the law had been complied with.

The rule is that where a corporation acts within the sphere of its general authority, but fails to comply with some formality or regulation which it should not have neglected, but which it has chosen to disregard, it is estopped to deny recitals of conformity to the law, upon which others have been induced to act.

But here the objection is not to the mode and manner of executing a power, but that there is a total defect of power, and can, therefore, be no estoppel. No formality of execution, however exact, can give validity to an act which the corporation had no right, under the law, to do. There is no estoppel against a legal disability.

Angell & Ames on Corp., § 256.
Fairtille ex dem Mylton and others vs. Gilbert and others, 2 D. and E., 169.
Sinclair vs. Jackson, 8 Cow., 587.
The Penn., Del., & Maryland Steam Navigation Co. vs. Dandridge, 8 Gill. and I., 319.
Welland Canal Co. vs. Hathaway, 8 Wend., 484.

9. This bond shows upon its face the object and purpose

for which it was issued, and any person taking the bond is bound to take notice whether the city had lawful authority to issue it for such purpose.

Had it been a simple obligation, without its explanatory recitals, it would have been presumed to be for a lawful consideration, within the corporate powers, and the city would have been estopped to show the contrary.

But the bond shows upon its face that it was made, not as a means of borrowing money, or securing the payment of money borrowed for any purpose public to the city in the sense in which the statute giving the power must be construed, but it was made as a loan to a railroad company, with which the city had no connection, and which it does not appear to have had the power to connect itself with.

This being patent on the face of the bond, all holders had notice of it.

They had notice also of the act incorporating the city—the city charter which is a public law. The city is not, therefore, estopped to raise the question of power; and it may be raised as well against a subsequent holder, as against the original contracting parties.

BROWNING & EWING,
for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

No. 96.

EVANS ROGERS, PLAINTIFF IN ERROR,

VS.

THE CITY OF BURLINGTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

BRIEF FOR DEFENDANT IN ERROR.

HAWK-EYE STEAM PRINTING HOUSE.

EVANS ROGERS, *Pl'ff in Error*,
vs.
THE CITY OF BURLINGTON, *Def't in Error.*

STATEMENT OF THE CASE.

This is a suit brought on interest coupons upon certain bonds issued by the Mayor and Recorder of the City of Burlington, Iowa, under Ordinance No. 44, of said city; a copy of one of which bonds is given on page 10 of the record in this cause.

To plff's petition deft. demurred. For demurrer, and the causes set forth, *vide* record, page 11.

This demurrer was sustained by the Circuit Court, and the plff. electing to abide by his petition, judgment was rendered for deft.

The ordinance under which the bonds were issued is as follows:

NUMBER 44.

AN ORDINANCE *to authorize a loan of City Bonds to the Burlington and Missouri River Rail Road Company, &c.*

WHEREAS, At a meeting of the City Council of the City of Burlington, held on the 19th day of May, A. D. 1856, a resolution was adopted authorizing the Mayor of said city

to call an election, and to submit the question whether or not the city issue and lend to the Burlington and Missouri River Rail Road Company, seventy-five thousand dollars in the bonds of said city, said bonds made payable in twenty years from date of issue, and with an interest of ten per centum per annum, payable semi-annually, and said loan to be secured by the first mortgage bond of said company, on the 2d section of the road of said company; and whereas, said election was duly and legally held on the 2d day of June, A. D. 1856, and said question was legally decided in favor of the same, whereby said loan is duly authorized to be made. Therefore,

Be it ordained by the City Council of the City of Burlington,

1st—The bonds of the city, to the extent of seventy-five thousand dollars, and in such amounts as the Mayor may direct, bearing interest and payable as aforesaid, and duly signed, sealed and authenticated, and with coupons for interest, be issued by said city.

2d—That the Mayor execute, with the said company, a contract of loan thereof, taking therefor the obligation of said company, and as collateral security therefor the mortgages aforesaid, and deliver said bonds to said company, and receive said mortgages.

J. L. CORSE, Mayor.

Attest J. D. SALES, Recorder.

Passed June 23d, 1856.

The clause of the city charter under which power to issue the bonds is claimed, is as follows:

"Sec. 27. That whenever in the opinion of the city coun-
"cil it is expedient to borrow money for any public purpose,
"the question shall be submitted to the citizens of Burling-
"ton. The nature and object of the loan shall be stated,

"and a day fixed for the electors of the said city to express "their wishes; the like notice shall be given as in case of "an election; the loan shall not be made unless two-thirds "of all the votes polled at such election shall be given in "the affirmative."—*Vide* Laws of Iowa, Session of May 5, 1845, page 73, for charter.

Although not material to the case, it is due to the city to say that the security for the loan required by the ordinance was never given.

A copy of the above ordinance and section 27 of the charter are printed on the back of the bonds. This is conceded by counsel for plaintiff in error.

BRIEF FOR DEFENDANT IN ERROR.

The bonds in controversy are nothing more or less than *accommodation paper* issued by the city authorities to the B. & M. R. R. R. Co.

This fact clearly appears upon the face of the bonds, and is specifically stated in the ordinance under which they were issued.

They were *not* given in payment for subscription of stock, and derive no aid from the act of the Legislature of date Jan. 25, 1855, which refers only to bonds given on subscription of stock.

In this particular they differ materially from the bonds in controversy in *Gelpcke* v. *Dubuque*, 1 Wall, 176, and *Meyer* v. *Muscatine*, ib., 384, and do not come within the principles held in those cases.

We insist—

1st. That every person dealing with a municipal corporation created by a special charter is bound, and conclusively presumed, to know the extent of its *power*, although he may not be chargeable with notice of any *irregularity* in the *exercise* of a power conferred.

Power in such cases is a question of *law*, under the express statutes of the State; *irregularity* in its exercise is a question of fact, which third parties are not bound to know. Sec. 29 of the Charter makes it a public act.

1 Parsons on Notes and Bills, p. 166.
Broughton v. *Man. & S. Water Works Co.*, 3 B. & Ald. 1.

2d. That parties purchasing bonds issued under a city ordinance, especially when the bond refers to it on its face, and gives the title which shows the purpose for which they were issued, are chargeable with notice of the ordinance.

3d. That the endorsement of the ordinance on the back of the bonds was *actual* notice to the purchaser of the object and purpose for which they were issued, and of their illegality if there was a want of power to issue them.

4th. If there is any doubt as to the *power*, that doubt is to be resolved in favor of the public.

Moran v. *Com'rs of Miami County*, 2 Black, 723.

5th. That the question of the legality of bonds like these had never been passed upon by the courts of Iowa prior to the commencement of this suit, and "judicial faith" is not pledged to their validity.

If these positions are correct the only question remaining is, whether the city had power to loan her credit; in other words, to issue accommodation paper to any one.

"A corporation is not authorized, it is said, to give a "note for the accommodation of a third person; and any "one who purchases such a note with notice of the circum- "stances under which it was given cannot recover upon it."

1 Parsons on Notes and Bills, p. 166.
Bank of Gennessee v. *Patchen Bank*, 3 Kernan, 309.
Clark v. *Des Moines*, Sup. Ct. Iowa, MS. opinion.
Mayor of Albany v. *Cornliff*, 2d Comst., N. Y., 165
Cuyler v. *Rochester*, 12 Wend., 165.
Hodges v. *Buffalo*, 2 Denio, 510.
Halstead v. *Mayor*, 3 Comst., N. Y., 430.
Boon v. *Utica*, 2 Barb., 104.
Cornell v. *Guilford*, 1 Denio, 510.
Boyland v. *Mayor*, 1 Sandf., N. Y., 27.
Dill v. *Wareham*, 7 Metc., 438.
Vincent v. *Nantucket*, 12 Cush. 103–105.
Stetson v. *Kempton*, 13 Mass., 272, (a very strong case)
Parsons v. *Goshen*, 11 Pick., 396.
Hood v. *Linn*, 1 Allen, (Mass.) 103.
Spaulding v. *Lowell*, 23 Pick., 74.
Mitchell v. *Rockland*, 45 Me., 196.
See also, 41 Me., 363.
Anthony v. *Adams*, 1 Metc., (Mass.) 284.
Western College v. *Cleveland*, 12 Ohio, 375.
Conners v. *Cox*, 6 Ind., 403.
Inhabitants v. *Weir*, 9 Ind., 224.
Smead v. *R. R. Co.*, 11 Ind., 104.
Brady v. *Mayor*, 20 N. Y., 16 Smith, 312.
Estep v. *Keokuk County, Iowa*, MS. opinion.
Clark v. *Polk County, Iowa*, MS. opinion.

The above cases, though not all upon accommodation paper, establish fully the principle involved in this case.

In *Clark* v. *Des Moines, Iowa*, MS. opinion, pp. 28–9, the Court say: "No instance occurs to us in which it would "be competent for the city to loan its credit, or make its "accommodation paper for the benefit of citizens to enable "them to execute private enterprises. To recognize such a "right would be to break down, to a great extent, the checks "and limitations on the power of the corporation—checks "and limitations designed to protect and secure the "inhabitants against the dangers of speculative and extra "municipal projects."

This last case was on warrants loaned by the City of Des Moines, to aid in the erection of a *toll-bridge within the city limits*—as much of a public use as a railroad *outside.*

We take it, then, to be well settled at common law that the city had no such power. If there be any it must be found in her charter, either by express provision or from *necessary* implication.

It is claimed to have been conferred by section 27, of the Charter. Section 27 authorizes *borrowing* money for *public use.. It confers no new power* on the city. The words "*public use*" are to be construed as referring to the powers elsewhere granted by the charter, and this section was intended to enable the city to exercise the powers conferred by the charter, or rather, to prevent their defeat for want of cash on hand, and not as a sweeping authority to borrow money at their discretion for any purpose whatever. Any other construction places the property of the tax payers, *the few*, in the power of the non-tax payers, an utterly irresponsible *majority*, in the cities.

There is no other clause in the charter by which it is pretended that this power is conferred. We confidently assert

that there is nothing in the charter of the city, or in the statutes of Iowa, that the most vivid imagination can torture into an authority to the city to loan its paper to third parties. An authority to *borrow* money is as distinct from an authority to *loan* money, or issue accommodation paper, as a power of attorney to buy real estate is from a power of attorney to sell it.

We take it that no Court would hold a party liable on an accommodation note executed by an agent acting under a written power of attorney to *borrow* money for his principal, and to execute the principal's notes therefor, if the holder, when he purchased the note, saw the written power and knew the limit of his authority. *A fortiori*, a city acting under a special charter, will not be held liable on accommodation paper issued under an authority to *borrow* money for public use.

The question as to the validity of the bonds in controversy has recently, and for the *first time*, been passed upon by the Supreme Court of Iowa, in *Chamberlain* v. *The City of Burlington*, and the court holds distinctly that the city had no power to issue them, and that the object for which they were issued appearing upon their face, every purchaser had notice of their illegality. *Vide* MS. opinion.

The rule that the Federal Courts will follow the construction of her statutes given by the highest courts of a State, especially when there is no conflict, as in this case, is not founded on either courtesy or comity, but is a necessary result of the power of a State to legislate for itself. Any other rule would enable the Federal Courts practically to repeal State legislative acts.

CHAS. H. PHELPS,
of Counsel for Deft in Error.

In the Supreme Court, of the United States.

DECEMBER TERM, 1864. No. 170.

EVANS ROGERS,

Plaintiff in Error,

vs.

THE CITY OF BURLINGTON,

Defendant in Error.

Statement, Points, and Brief of Plaintiff in Error.

King & Baird, Printers, 607 Sansom St., Philada.

EVANS ROGERS, Plaintiff in Error, *vs.* THE CITY OF BURLINGTON, defendant in Error.	In the Supreme Court of the United States, No. 170, December Term, 1864.

Statement, Points, and Brief of Plaintiff in Error.

This case is before this Court on a writ of error from the Circuit Court of the District of Iowa.

On the 23d of March, 1863, the plaintiff sued the defendant in that court on interest coupons annexed to twenty bonds in the following form:

A

1856. "THE CITY OF BURLINGTON. 1856.

Bond No. 50. One thousand dollars, issued by the City of Burlington, under Ordinance 44. To authorize a loan of City bonds to the amount of $75,000 to the Burlington and Missouri River Railroad Company.

Twenty years after date, the City of Burlington, in the State of Iowa, promise to pay to bearer at the office of E. W. Clarke, Dodge & Co., in the City of New York, one thousand dollars for value received, without defalcation, with interest at the rate of eight per cent. per annum, payable semi-annually, at the same place, on the first day of August and February in each year, upon presentation of the coupons severally hereto annexed, until the payment is well and truly made of the said principal sum of one thousand dollars. In witness whereof, and in pursuance of Ordinance No. 44 of said city, entitled "An Ordinance to authorize a loan of city bonds to the amount of seventy-five thousand dollars to the Burlington and Missouri Railroad

Company," the Mayor of said city hereto sets his hand and causes the corporate seal of said city to be affixed, and the Recorder of said city countersigns the same at the city aforesaid, this First day of August, A. D. Eighteen hundred and fifty-six.

D. G. SALES, *Recorder.*
J. L. CORSE, *Mayor.*

The petition alleges that the defendant is a municipal corporation created and existing under the laws of the State of Iowa, and that of the City of Burlington, in pursuance of an ordinance, No. 44, passed June 23d, 1856, and under authority of an act of the General Assemby of the Territory of Iowa, approved June 10th, 1845, executed the bonds in question.

The defendant demurred to the petition in these words:

1st. Said petition does not aver nor show that the said city had any power or authority to issue the bonds in plaintiff's petition described.

2d. Said bonds, on their face show that they were not issued for any municipal purpose. They were issued as a loan of the credit of the City of Burlington to the Burlington and Missouri River Railroad Company, which is not for a municipal purpose, and said petition contains no averment that said bonds were for a municipal purpose, and shows no legal authority from the Legislature of the State of Iowa to said city to issue said bonds.

3d. There is no law of the State of Iowa authorizing or empowering said city to issue said or such bonds, or to loan her credit to any railroad company.

4th. Said petition neither pleads nor sets forth any private or local act of the Legislature of the State of Iowa authorizing or empowering said city to issue such bonds nor to loan the credit of said city to any railroad company.

5th. Said petition does not aver nor show that said loan

was for the benefit of said city, nor that any consideration passed for said loan, nor that the proceeds of said loan were to be applied to any municipal purpose, nor to any purpose authorized by the charter of said city or by the laws of the State of Iowa.

6th. The facts set up in plaintiff's petition do not constitute any cause of action.

On the 22d of May, 1863, the demurrer was sustained and judgment rendered in favor of the defendant. A bill of exceptions was duly allowed, sealed, and a writ of error sued out.

The City of Burlington was incorporated by the Territorial Legislature by act approved June 10th, 1845, (See laws of Iowa, 1844--45, p. 73, chap. 54.) entitled "An act to incorporate the City of Burlington, &c.

The 1st section defines the limits of the city and confers the ordinary corporate powers granted to a city, to be executed by a mayor and board of aldermen.

The 27th section provides, "That whenever in the opinion of the city council, it is expedient to borrow money for any public purpose, the question shall be submitted to the citizens of Burlington; the nature and object of the loan shall be stated, and a day fixed for the electors of said city to express their wishes; a like notice shall be given as in cases of an election; the loan shall not be made unless two-thirds of all the votes polled at such election shall be given in the affirmative."

SEC. 28. "Before this act shall take effect in force, a vote shall be taken upon the adoption of the same," &c.

SEC. 29. "That this act shall be taken and received in all courts and by all judges, magistrates, and other public officers as a public act, and all printed copies of the same which shall be printed by or under the authority of the Council and House of Representatives shall be admitted as good evidence thereof without any other proof whatsoever."

Article 12, of the Constitution of Iowa, of the 18th of May, 1846, provides:

SEC. 1. "That no inconvenience may arise from th change of Territorial government to a permanent State government, it is declared that all writs, actions, prosecutions, contracts, claims or rights, shall continue as if no change had taken place in this government," &c.

SEC. 2. "All the laws now in force in this territory which are not repugnant to this Constitution, shall remain in force," &c. (See Rev. Code of Iowa of 1860, p. 979.)

On the 25th of January, 1855, the Legislature of Iowa passed this law. (See acts of 1854–5, page 192, chapter 128, bonds.)

"An act regulating the interest on city and county bonds."

SEC. 2. "That whenever any company shall have received or may hereafter receive the bonds of any city or county *upon subscription of stock* by such city or county, such bonds may have interest at any rate not exceeding ten per cent. and may be sold by the company at such discount as may be claimed expedient."

SEC. 3. The provisions of this act shall apply to any railroad bonds which have been heretofore issued, as well to those that may hereafter be issued.

And, also, on the same day, this other law, being chapter 146, page 219, sess. acts of 1854–5:

"That in all cases where county or town or city incorporations, have or may hereafter become stockholders in railroads or other private companies or incorporations, it shall not be lawful for the county judges, mayors or other agents of such cities or counties, to issue the bonds of their counties or cities, until they are satisfied that the contemplated improvements will be constructed through or to their respective cities or counties, within thirty-six months from the issuing or delivery of said bonds * *: *Provided*, That nothing in this act shall in way affect corporation rights, for any contracts or subscriptions heretofore made with any railroad company or corporation for the issuing of county corporation bonds."

To sustain the validity of the bonds sued upon and reverse the judgment below, the plaintiff in error relies upon the following points and authorities.

I. The city of Burlington, under its charter, had full capacity to borrow money to subscribe to the stock of the Burlington & Missouri River Railroad Company, and issue bonds in payment of such subscription.

1st. The territorial legislature of Iowa had power to incorporate the city of Burlington, and confer the capacity to borrow money for public purposes. (Rev. Code of Iowa of 1860, p. 954, 948, 946, ordinance of 1787, 1 Stats. at Large, 51; act of 7th August, 1787, id., p. 50.

4 Wheat., 316; 1 Pet. 511, 546; 3 How., 212, 223; 12 How., 1, 8; 14 How., 268, 272–3.

7 Wend., 539, Williams *vs.* Bank of Michigan.

11 Martin's Rep., 309, The State of Louisiana *vs.* Orleans Navigation Company.

2d. The power to borrow money granted in the City charter, authorized the issuance of the bonds in question to the Burlington and Missouri River Railroad Company.

1 Wallace, 175, 177, 202, 220, 221, Gelpcke *vs.* The City of Dubuque.

1 Wallace, 385, Meyer *vs.* City of Muscatine.

3d. There is no provision in the Constitution of the State of Iowa rendering invalid, or limiting the authority, contained in these acts of the Legislature, to issue bonds for railroad subscriptions.

Gelpcke *vs.* Dubuque, 1 Wallace, 175.

Dubuque county *vs.* Dubuque & Pacific R. R., 4 Greene, 1.

State *vs.* Bissell, 4 Greene, 328.

Clapp *vs.* County of Iowa, 5 Iowa, 15.

King *vs.* County of Johnson, 6 Iowa, 265.

McMillen *vs.* Boyles, 6 Iowa, 304.

McMillen *vs.* County Judge of Lee county, 6 Iowa, 391.

Games *vs.* Robb, 8 Iowa, 193.

Stokes *vs.* County of Scott, 10 Iowa, 166.

5 How., 134, 139, Rowan *vs.* Runnels.
6 Wheat., 264; 6 Cranch., 87; 4 Wheat., 518.
16 How. 416, 431, Ohio Life Ins. & Trust Company *vs.* Debolt.
16 Pet., 1, 18, 19, Swift *vs.* Tyson, id., 511.
1 Wallace, 96, Mercer county *vs.* Hacket.
1 Black, 386, Woods *vs.* Lawrence county.

II. The bonds in question are regular and valid and binding upon the defendant.
21 How., 239, Comm'rs of Knox County *vs.* Aspinwall.
21 How., 575, White *vs.* Vermont & Mass. R. R.
23 How., 391, 398, Zabriskie *vs.* Cleveland.
24 How., 287, 298, 300, Bissel *vs.* City of Jeffersonville.
2 Black, 722, 730–2, Moran *vs.* Comm'rs of Miami county.
1 Wallace, 175, Gelpcke *vs.* Dubuque.
1 Wallace, 220, Same *vs.* Same, No. 81.
1 Wallace, 221, Same *vs.* Same, No. 79.
1 Wallace, 83, Mercer county *vs.* Hacket.
1 Wallace, 272, Seybert *vs.* City of Pittsburgh.
1 Wallace, 291, Van Hostrup *vs.* Madison city.
1 Wallace, 384, Meyer *vs.* City of Muscatine.

In support of the first proposition it is urged:

First.—That the Territorial Legislature of Iowa had the power to incorporate the City of Burlington, with capacity to borrow money.

The Territory of Iowa was established by Act of 12th June, 1838 (p. 954, Rev. Code of Iowa of 1860), which cut it off from Wisconsin, and gave it the same government.

On the 20th April, 1836 (p. 948, Code of Iowa of 1860), was passed an act establishing the territorial government of Wisconsin, the 12th section of which gave the inhabitants the rights granted to the people of the territory northwest

of the river Ohio by ordinance of 13th July, 1787, and also to the people of Michigan.

The sixth section provided that the legislative power should extend to all rightful subjects of legislation, and contained an enumeration of the exceptions; which were that no law should be passed, interfering with the primary disposition of the soil; no tax should be imposed upon the property of the United States; nor should the lands, or other property of non-residents, be taxed higher than the lands, or other property, of residents.

These, along with the other exceptions, contained in the six articles of compact in the ordinance of 13th July, 1787, constituted the only restraint on the power of the territorial legislature.

By Act of January 11th, 1805, entitled "An Act to divide the Indiana Territory into two separate Governments," (Rev. Code of Iowa of 1860, p. 946,) the Territory of Michigan was established.

The second section of this Act refers to the ordinance of 1787, and to the Act of Congress of 7th August, 1789, entitled "An Act to provide for the government of the territory northwest of the river Ohio," (1 Stat. at Large, p. 50,) modifying the ordinance of 1787, and enacts, that in the Michigan territory is established a Government, in all respects similar to that provided by the said ordinance and law of Congress.

Thus we trace the territorial government of Iowa directly back to the ordinance of 1787, and Act of 7th August, 1789.

Chief Justice Marshall says, in McCulloch *vs.* The State of Maryland, 4 Wh., 316:

"Yet all admit the constitutionality of a territorial government, which is a corporate body."

In 1 Pet., 511, 546, The American Insurance Company *vs.* Canter, he speaks of territorial governments in this language:

"In legislating for them, Congress exercises the combined powers of the general and of a State Government."

In 3 How., 212, 223, Pollard's Lessee *vs.* Hagan, McKinly, J., says, in delivering the opinion of the Court, speaking of the District of Columbia, and public places, used by the United States for arsenals, and other needful buildings, &c.:

"And these are the only cases, within the United States, in which all the powers of government are united in a single government, except in the cases already mentioned of the temporary territorial governments, and there a local government exists."

In 12 How., 1, 8, The Miners Bank *vs.* The State of Iowa, this Court speaks of territorial governments, as possessing general powers, in these words:

"The reverse of this argument, whilst it is accordant with the investiture of general legislative power in the territorial governments, places them in the position of usefulness and advantage, towards those they were bound to foster."

In 14 How., 268, 272–3, Trustees for the Vincennes University *vs.* The State of Indiana, this Court say, in speaking of a territorial act incorporating a College: The defendant's answer "also denies that the territorial government had any power to incorporate the plaintiffs." * * "Under the ordinance (of 1787) the legislature of the territory was vested with *general legislative* powers, restricted only by the articles contained in that instrument."

7 Wend., 539, Williams *vs.* The Bank of Michigan, holds that the territorial government of Michigan had power to incorporate a Bank.

11 Martin's Rep., 309, The State *vs.* Orleans Navigation Company, holds that the territorial government of Louisiana could grant a charter, which would remain in force after the admission of the State into the Union.

Second. —The power to borrow money granted in the City

charter, authorizes the action of the City Council exercised in this case. The expression is in comprehensive terms, viz.:

"That whenever in the opinion of the City Council, it is expedient to borrow money for any public purpose," &c.

In 1 Wallace 175, 177, 202, this Court construed a clause in the same words in the charter of Dubuque. On p. 203, the language of this Court is:

"By these enactments, if they are valid, ample authority was given to the city, to issue the bonds in question. The city acted upon this authority. * * This question, with reference to a statute containing similar provisions, came under consideration of the Supreme Court of Iowa, in McMillen *vs.* Boyles, 6 Iowa, 305, and again in McMillen *vs.* Lee County, *Id.*, 391. The validity of the act was sustained. Without these rulings, we should entertain no doubt on the subject."

Again in 1 Wallace, 385, Myers *vs.* The City of Muscatine, the suit was upon bonds issued under a charter, containing the grant of power in these words, (sec. 15, p. 386): "To borrow money for any object in its discretion," &c.

In addition to the power thus given to Burlington and other cities, by their charters, the Legislature of the State of Iowa passed the two Acts of 25th January, 1855, chapters 128 and 146 of the fifth General Assembly, which are set out above.

Commenting on these Acts, on page 390, 1 Wallace, the Court say:

"When the bonds and coupons were issued the Acts of the Legislature of Iowa of 25th January, 1855, were in force."

These acts, in connection with the provisions of the charter furnish, in our judgment, a conclusive answer to this objection, "which was that the city had no power to issue the bonds."

Third. There is no provision in the constitution of the state of Iowa rendering invalid or limiting the authority

contained in these acts of the Legislature, to issue bonds for railroad subscriptions.

Although this question has been fully and carefully examined and decided in the case of Gelpcke *vs.* Dubuque, 1 Wallace, 175, I will here put in the order in which they were made, the several decisions upon the subject by the Supreme Court of Iowa.

In 1853, in the case of Dubuque County *vs.* the Dubuque and Pacific Railroad, 4 Greene, 1, it was held by the Supreme Court of Iowa, that section 114 of the code authorized counties to subscribe to the stock of railroads, and that the law was constitutional.

The second case, in 1854, 4 Greene, 328, State *vs.* Bissell adheres to the same principle, upon the authority of the first case.

The third case was decided in 1857, Clapp *vs.* the County of Cedar, 5 Iowa, 15, and adheres to the same principles. It elaborately considers all the points of defence that could possibly be raised, and decides every one in favor of the validity of the bonds.

The fourth case was decided in 1858, Ring *vs.* County of Johnson, 6 Iowa, 265, and sustains the previous decisions.

The fifth case was in 1858, McMillen *vs.* Boyles, 6 Iowa, 304, and is to the same effect.

The sixth case was in 1858, McMillen *vs.* the County Judge of Lee County, 6 Iowa, 391, and follows the previous decisions. It is to be observed, in this case, that Judge Wright, who had dissented in the former cases, delivers the opinion of the court, and of the constitutional power says:

"While I have never concurred in this ruling, and still deny the power, yet it may now, as I suppose, be regarded as settled."

The seventh case, decided in 1859, Games *vs.* Robb, 8 Iowa, 193, asserts the power to exist as a settled question.

In the eighth case, decided in 1859, Stokes *vs.* County of Scott, 10 Iowa, 166, in affirming the existence of this power,

Judge Woodward, for the majority of the court, and in reply to the dissenting opinion of Judge Wright, says:

"And regarding the fact, that companies and individuals had committed themselves to a very great extent, putting faith in the previous adjudications and legislation, we conceive ourselves bound, by as high considerations as can well be addressed to a court, to stand by past decisions."

Thus stood the law down to 1862, when the case of the State *vs.* the County of Wapallo, 13 Iowa, 388 was decided, dissenting from the former decisions; since when many like decisions have been made; 14 Iowa, Rock *vs.* Wallace; *id.* McMillen *vs.* Boyles; 15 Iowa, 386, Smith *vs.* Henry County; *id.* 486, Ten Eyck *vs.* Mayor of Keokuk. The bonds here sued upon were dated 1st of August, 1856, previous to which the two first cases affirming the validity of bonds issued to railroads; and now in 1857 was delivered a decision calculated to give to these bonds the highest character, as an undoubted security, in the public mind.

The court go over the whole ground; they decide that the constitution authorized the Legislature to confer the power upon counties to issue the bonds; that the Legislature had duly conferred such power; that the bonds were negotiable instruments, passing from hand to hand by mere delivery; and that purchasers and holders of them could buy them safely, for no secret defects, if any such existed, could be urged against their validity. The character of good faith imported by the bonds could not be repudiated by those corporate bodies who had authorized their regular agents to issue and sell them.

And to quiet any fears of careful capitalists, who might raise a doubt as to the validity of these bonds, on account of the opinions of dissenting judges, and to remove every obstacle to their successful negotiation, in 1855, January 25th, the Legislature passed the two acts above cited, the intention and effect of which is to confer, by implication, full authority on all cities to aid railroads with money borrowed from capitalists out of the state.

The City of Dubuque, noted in this court for its resistance to these obligations by three cases, reported in 1 Wallace, 175 to 223, went still further, and procured another act of the Legislature, approved 28th January, 1857, specially authorizing it to borrow money for railroad purposes.

Railroads for the public benefit are to be built; the cities and counties determine, by the almost unanimous vote of their people, to go into the work; the Legislature passes laws in every form in which they are asked, to enable these corporations to give public security for money to be borrowed; and to crown the work, the judicial department adds its mature deliberate sanction to give faith and credit to the securities, which are to be the means of transferring the accumulated capital of older communities and other men, to their new country. This modern commercial contrivance, called negotiable bonds, is adopted.

To learn with what character and qualities they go forth seeking and winning the confidence of the people of other states, let us turn to the cotemporaneous declarations of the Supreme Court of Iowa.

The case of Clapp *vs.* the County of Cedar, 5 Iowa, 15, decided in 1857, holds, p. 44. 1st, the Legislature can constitutionally authorize counties to borrow foreign capital to build up home railroads, and issue negotiable bonds. I say foreign capital, because the bonds are payable in New York, and are sued, to specified railroads in Iowa.

2d, that the laws made for that purpose were effectual, and did confer the power.

This being the third case in which these questions were brought before the court, and being urged to reverse the two previous decisions, it says, p. 46:

"But this is a subject on which change is disastrous. It is one on which we are bound by former decisions. Such a one has been made, and the world have acted upon it. To change now would be the worst of all repudiation, judicial repudiation. The first decision on a subject of this nature,

by the highest judicial tribunal of this state, at a time when the business of the country is moving on, is final; it determines the policy of the state. It is impossible to recede. The world waits and listens for the judicial determination, and then acts accordingly, and in this case has acted with vigor.

"This question was determined in the case of 4 Greene, 1 and 328, and *five railways* have commenced their progress across the state, and several millions of dollars have been subscribed by our counties. Let us look at our judicial and legislative history on this subject. It is short, but effective. The case of the Dubuque and Pacific Railroad was brought to this court *expressly to test* this question. Judgment was rendered affirming the power in the court. * * *

Let us next see what the Legislature has done, remembering that we are now in early times, when contemporaneous construction arises.

By Statute of 1854–5, (chap. 128, 1855, p. 190,) it is enacted as follows:

(The Court here recites the above named laws, and also chap. 149, p. 219, conferring the authority on cities and towns to borrow in aid of railroads.)

"Now, when these decisions and this legislation are regarded, does any lawyer expect this Court to overturn all that has been done on the faith of them?"

The Court then proceeds to the minor questions raised, touching these bonds, as to their negotiable quality, &c.

At p. 48, they hold the recitals in the bonds to be binding.

pp. 48–9, "If the paper is not negotiable, many defences may be made against it, which cannot be if negotiable, and this is true, both by the common law rule, and by Sec. 949 of the code."

The principal obligation, the bond, must be considered as a negotiable instrument.

On p. 50, by the laws of Iowa, a specialty is negotiable. Page 51, "With us, sealed instruments have ever been nego-

tiable." The bond in question being examined by the Court, it says: "It possesses the principal qualities of a promissory note. * * Besides the promise, it shows the authority by which it was issued, and the purpose for which it was designed. The only effect of this, it is apprehended, is to put the purchaser on inquiry as to that authority.

On p. 53 to 58, the Court examine the question of non-compliance by the Agents of the County with the terms of the law, and hold that irregularities constitute no defence to the bonds in the hands of bona fide holders.

And on pp. 56, 57 and 58, the defence of fraud is not available, unless averred and proved by the defendant. Setting up such defence leaves the burden of proof against the defendant.

In the case of King *vs.* County of Johnson, 6 Iowa, 265, it was held an action could be maintained upon coupons alone, separate from the bonds, and that where the law required a vote to be taken, it was not necessary in pleading to aver that the preliminary acts had been taken. The Court speak in this case of these bonds and coupons as a note, and say:

"The law giving the power to make the contract and to give the *note*, in a certain state of things, and the note having been given, the pleader may assume the needful circumstances until the contrary is pleaded."

This is in conformity with the ruling of this Court, in 1 Wallace, 221.

These decisions are the law of this case, as held by this Court in 1 Wallace, 205, where this language occurs:

"It is urged that all these decisions have been over-ruled by the Supreme Court of the State in the later case of the State of Iowa *vs.* The County of Wapello, 13 Iowa, 390, and it is insisted that in cases involving the construction of a State law, or constitution, this Court is bound to follow the latest adjudication of the highest Court of the State." The true rule, however, is stated on page 206, that where the contract, when made, was valid by the laws, as expounded

When sup. ct. of U.S. does not adopt the construction of a State law in conformity to a change in such construction by the State Court.

by all Departments of the State Government, its validity cannot be impaired by subsequent change of the law.

In 5 How., 134, 139, Rowan *vs.* Runvels, this Court say:

"Undoubtedly this Court will always feel itself bound to respect the decisions of the State Courts, and from the time they are made will regard them as conclusive in all cases upon the construction of their own constitution and laws."

But we ought not to give to them a retro-active effect and allow them to render invalid, contracts entered into with citizens of other States, which in the judgment of this Court were lawfully made.

For if such a rule were adopted, and the comity due to State decisions pushed to this extent, it is evident that the provision in the Constitution of the United States, which secures to the citizens of another State the right to sue in the Courts of the United States, might become utterly useless and nugatory.

Chief Justice Marshall, in 6 Wheat., 264, says:

"These parties have a constitutional right to come into the Courts of the Union"—and there is reason for it in the case at bar, as intimated by the same Judge further on in the same case, in this language:

"It would be hazarding too much to assert that the judicatures of the States will be exempt from the prejudices by which the Legislatures and people are influenced, and will constitute perfectly impartial tribunals."

In 6 Cranch, 87, he says:

"Whatever respect might have been felt for the State sovereignties, it is not to be disguised that the framers of the Constitution viewed, with some apprehension, the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed."

And in 4 Wheaton, 518, in delivering the opinion of the Court, he says:

"This Court can be insensible neither to the magnitude nor delicacy of the question.

"The validity of a legislative act is to be examined, and the opinion of the highest law tribunal of a State is to be revised. * * On the Judges of this Court, then, is imposed the high and solemn duty of protecting, from even legislative violation, those contracts which the Constitution of our country has placed beyond legislative control; and however irksome the task may be, this is a duty from which we dare not shrink."

In 16 How., 416, 431, C. J. Taney says:

"It is true that this Court always follows the decision of the State courts in the construction of their own constitution or laws."

"But where those decisions are in conflict, this Court must determine between them. * * And upon the question as to the validity of such a contract, the Court upon the soundest principles of justice, is bound to adopt the construction it received from the State authorities, at the time the contract was made," and on p. 432, the Court states the rule in the langauge repeated in 1 Wallace, 206, which adds:

"The same principle applies where there is a change of judicial decision as to the constitutional power of the legislature to enact the law. To this rule, thus enlarged, we adhere. It is the law of this Court. It rests upon the plainest principles of justice. To hold otherwise, would be as unjust as to hold that rights acquired under a statute may be lost by its repeal. The rule embraces this case."

In a partially dissenting opinion, 16 How., 416, at p. 443, Mr. J. Campbell says:

"I concur in the opinion of the Chief Justice concerning the interpretation of the statutes of Ohio, involved in this case, and the doctrines of interpretation applicable to these and statutes of a similar description, and in the conclusion to which they conduct."

And in the same case at p. 450–451, Mr. J. Curtis, although he dissents, yet, as to to the principle of interpreting

statutes, says: "I fully concur in the views of the Chief Justice as expressed in his opinion."

This Court has repeatedly declared, that the cases in which it adopts the principles established by decisions of State courts are "strictly limited to local statutes and local usages," * "and to rights and titles to things having a permanent locality, such as the rights and titles to real estate and other matters immovable and intra-territorial in their nature and character," and they do "not extend to contracts and other instruments of a commercial nature, the true interpretation and effect whereof are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence." This is the language of Story, J., commenting upon the 34th section of the judiciary act, 18 and 19 of 16 Pet. (see also 16 Pet. 511.)

Mr. J. Grier says, in Mercer Co. *vs.* Hacket, 1 Wallace, 96, in relation to following the decision of the Supreme Court of Pennsylvania on a State law authorizing the issue of railroad bonds:

"If this decision of that learned Court was founded on the construction of the constitution or statute law of the State, or the peculiar law of Pennsylvania as to titles to land, we would have felt bound to follow it. But we have often decided, that on questions of mercantile or commercial law or usages, which are not peculiar to any place, we do not feel bound to yield our own judgment."

In Woods *vs.* Lawrence Co., 1 Black, 386, it is apparent from what is said in the argument, p. 394--395, that the same question was before this Court
the decision of the Supreme Court
bonds issued under the statute of th
of the Court (p. 407) is that it will
change in the decision of the Supre
The question was upon the negotiabl

2d. In support of the second prop
the hands of innocent
"But the real point

"This Court can be insensible neither to the magnitude nor delicacy of the question.

"The validity of a legislative act is to be examined, and the opinion of the highest law tribunal of a State is to be revised. * * On the Judges of this Court, then, is imposed the high and solemn duty of protecting, from even legislative violation, those contracts which the Constitution of our country has placed beyond legislative control; and however irksome the task may be, this is a duty from which we dare not shrink."

In 16 How., 416, 431, C. J. Taney says:

"It is true that this Court always follows the decision of the State courts in the construction of their own constitution or laws."

"But where those decisions are in conflict, this Court must determine between them. * * And upon the question as to the validity of such a contract, the Court upon the soundest principles of justice, is bound to adopt the construction it received from the State authorities, at the time the contract was made," and on p. 432, the Court states the rule in the langauge repeated in 1 Wallace, 206, which adds:

"The same principle applies where there is a change of judicial decision as to the constitutional power of the legislature to enact the law. To this rule, thus enlarged, we adhere. It is the law of this Court. It rests upon the plainest principles of justice. To hold otherwise, would be as unjust as to hold that rights acquired under a statute may be lost by its repeal. The rule embraces this case."

In a partially dissenting opinion, 16 How., 416, at p. 443, Mr. J. Campbell says:

"I concur in the opinion of the Chief Justice concerning the interpretation of the statutes of Ohio, involved in this case, and the doctrines of interpretation applicable to these and statutes of a similar description, and in the conclusion to which they conduct."

And in the same case at p. 450–451, Mr. J. Curtis, although he dissents, yet, as to to the principle of interpreting

statutes, says: "I fully concur in the views of the Chief Justice as expressed in his opinion."

This Court has repeatedly declared, that the cases in which it adopts the principles established by decisions of State courts are "strictly limited to local statutes and local usages," * "and to rights and titles to things having a permanent locality, such as the rights and titles to real estate and other matters immovable and intra-territorial in their nature and character," and they do "not extend to contracts and other instruments of a commercial nature, the true interpretation and effect whereof are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence." This is the language of Story, J., commenting upon the 34th section of the judiciary act, 18 and 19 of 16 Pet. (see also 16 Pet. 511.)

Mr. J. Grier says, in Mercer Co. *vs.* Hacket, 1 Wallace, 96, in relation to following the decision of the Supreme Court of Pennsylvania on a State law authorizing the issue of railroad bonds:

"If this decision of that learned Court was founded on the construction of the constitution or statute law of the State, or the peculiar law of Pennsylvania as to titles to land, we would have felt bound to follow it. But we have often decided, that on questions of mercantile or commercial law or usages, which are not peculiar to any place, we do not feel bound to yield our own judgment."

In Woods *vs.* Lawrence Co., 1 Black, 386, it is apparent from what is said in the argument, p. 394--395, that the same question was before this Court in relation to following the decision of the Supreme Court of Pennsylvania, as to bonds issued under the statute of the State; and the ruling of the Court (p. 407) is that it will not be influenced by a change in the decision of the Supreme Court of the State. The question was upon the negotiable character of the bond.

2d. In support of the second proposition, that the bonds in

Wade Bonds are valid & obligatory

question are regular and binding upon the defendant, it is urged:

"That these securities are treated as negotiable, by the commercial usages of the whole civilized world, and have received the sanction of judicial recognition, not only in this Court, but of nearly every State of the Union." 1 Wallace. 95.

"This species of bonds is a modern invention, intended to pass by manual delivery, and to have the qualities of negotiable paper." Id. 95.

"When a corporation has power, under any circumstances, to issue negotiable securities, the bona fide holder has a *right to presume* they were issued under the circumstances which give the requisite authority; and they are no more liable to be impeached for any infirmity in the hands of such a holder, than any other commercial paper." 1 Wallace, 203.

The following principles are established by the case of Knox County *vs.* Aspinwall et al., 21 How., 539:

After a municipal corporation has executed the authority given it by law, to aid the construction of public improvements, the stock subscribed, and the bonds issued, and in the hands of innocent holders, in a suit upon the bonds, or the interest coupons, the only defence that can be admitted is that there is no law conferring the power exercised by the corporation.

As to compliance with the directions, the holder may presume every act to have been done, necessary to give validity to the bonds. If a preliminary vote is to be taken, the tribunal to conduct the election is the judge of compliance with the law; and where "the bonds, on their face import a compliance with the law under which they were issued, * the purchaser is not bound to look further for evidence of a compliance with the conditions to the grant of the power."

In Moran *vs.* The Commissioners of Miami county, 2 Black, 722, this Court reviews the decisions upon this question at large, and concludes thus on p. 731:

"But the real point in this case * was, that as it is de-

clared in the bonds, that they were issued by the Board of Commissioners of Miami county, by order or resolution pursuant to the statute, authorizing the county to borrow money, passed at a regular meeting of the Board, to be used by the Peru & Indiana railroad, payable to the company or bearer, for a loan to the county, that the *bona fide* holders of the bonds, whether so by endorsement or delivery, had a right to infer that the bonds had been lawfully issued, by which the county of Miama is *estopped*, in a suit for the recovery of the interest, from denying by pleas, that its bonds had been issued to the Peru & Indiana Railroad Company, for a loan of money to the county of Miami.

We think and adjudge that the recitals in the bonds are conclusive, constituting an estoppel in pais upon the defendants in this suit."

This principle is stated in Mercer county *vs.* Hackett, 1 Wallace, 92, by Mr. Justice Grier in delivering the opinion of the Court thus:

"The bonds declare on their face, that the faith, credit and property of the county are solemnly pledged, under the authority of certain acts of assembly, and that in pursuance of said acts the bonds were signed by the Commissioners of the county. They are on their face complete and perfect, exhibiting no defect in form or substance, and the evidence is to show the recitals on the bonds are not true; not that no law exist to authorize their issue, but that the bonds were not made in pursuance of the acts of Assembly authorizing them.

We have decided in the case of the Commissioners of Knox county, that where the bonds on their face import a compliance with the law, under which they were issued, the purchaser is not bound to look further.

The decision of the Board of Commissioners may not be conclusive, in a direct proceeding to inquire into the facts, *before* the rights and interests of other parties had attached, but *after* the authority has been executed, the stock subscribed and the bonds issued, and in the hands of innocent

holders, it would be too late, even in a direct proceeding, to call it in question."

In Van Hostrup *vs.* Madison city, 1 Wall., 291, at p. 297 the Court says—in a suit upon bonds issued by the City in aid of a railroad:

"Another objection taken is, that the proviso requiring a petition of two-thirds of the citizens, who were freeholders of the city, was not complied with.

As we have seen the bonds signed by the Mayor and clerk of the city, recite on the face of them that they were issued by virtue of an ordinance of the city, passed September 2, 1852. This concludes the city, as to any irregularities that may have existed, in carrying into execution the power granted to subscribe the stock and issue the bonds, as has been repeatedly held by this Court. * *

Even if the case had been doubtful, inasmuch as the city authorities have given this construction to the charter, and bonds have been issued in the hands of *bona fide* purchasers for value, we should have felt bound to acquiesce in it."

In Meyer *vs.* The City of Muscatine, 1 Wallace, 384, at p. 393, the Court says, in a suit upon similar bonds:

"No one interposed to prevent their issue.

It is not questioned that all the parties acted in good faith and the city cannot now be heard to object to the regularity of its own proceedings.

A party taking the bonds, was bound to look to the legal authority under which the public agents acted. If that were sufficiently comprehensive, he had a right to presume that those empowered to act and acting under it had complied with its requirements."

All of the principles declared by these subsequent cases are laid down in the case of the Commissioners of Knox county *vs.* Aspinwall.

21 How., 539, which is cited and approved in 24 How.,

299; 1 Wallace, 93, 297, 393, 203, and in 2 Black, 724, which speaks of it as "our leading case."

"A corporation, quite as much as an individual, is held to a careful adherence to truth, in their dealings with mankind and cannot by their representations or silence, involve others in onerous engagements and then defeat the calculations and claims their own conduct had superinduced." 23 How., 400.

And in 23 How., p. 398, with reference to the principle of holding a corporation estopped, from alleging, it had not complied with the formalities of the law, Mr. J. Campbell, says, in delivering the opinion of the Court:

"This principle does not impugn the doctrine, that a corporation cannot vary from the object of its creation, and that persons dealing with a company, must take notice of whatever is contained in the law of their organization.

This doctrine has been constantly affirmed in this Court. * * But the principle includes those cases, in which a corporation acts within the range of its general authority, but fails to comply with some formality or regulation which it should not have neglected, but which it has chosen to disregard."

See also, 24 How., 300, and the same words repeated in 2 Black, 723.

See also, 12 Wheat., 64, Bank of U. S. *vs.* Dandridge.

Examining the demurrer with the light of these decisions, every point is answered.

The first point, that the petition does not show that the city had any power to issue the bonds, is met by saying that the bonds profess to be issued by authority of a law, the terms of which are sufficiently comprehensive to cover this case.

This law, the precise copy of which was construed in the second case [No. 81] of Gelpcke *vs.* Dubuque, 1 Wallace, 220, in conjunction with the acts of 25th January, 1855, chap. 128 and 146; and which acts of 25th January, 1855, were construed in connection with the charter of the city of Muscatine, in 1 Wallace, 392, has been held by this Court

to be "sufficiently comprehensive" to authorize the city to borrow money and issue bonds.

What is here said is an answer to also the third, fourth, and fifth points of the demurrer.

The sixth point requires no notice, for by the practice in Iowa, an indefinite demurrer is to be disregarded. Rev. Code, sec. 2,877, 13 Iowa, 487.

The second point in the demurrer, is that the bonds show on their face that they were issued as a loan of credit by the city to the Burlington and Missouri River Railroad Company.

This is precisely the same objection as the fifth ground of defence urged against the Muscatine bonds, in 1 Wallace, pp. 389 and 392, and held by this Court to be of no weight.

Whether or not the bonds were issued for a municipal purpose, according to the present views of the defendant, it is too late now to put a restrictive meaning upon the words of the act, which says that whenever "it is expedient to borrow money for any public purpose."

If "any public purpose" is within the act, why is it necessary that any *specific* purpose should be designated by the bonds? Whether the purpose be this, or that, if it relates to matters that concern the city, it is equally within the law. Is the lender any more or less secure that the purpose is one or another object?

Who is to determine the purpose? Not the legislature, for it has left it unlimited. Not the lender. The borrower only. When determined, there is no revising or restraining body.

The mere purpose is the only thing the lender can see or know; he cannot insure its execution, nor that there will be any *bona fide* effort to carry it out.

He is left peculiarly hopeless, and therefore peculiarly without responsibility, under this law.

History shows that cities possess great powers, independently of any laws of incorporation; and the charter of Bur-

lington is to be regarded as rather an extraordinary grant of *capacity* to exercise powers, than a grant of powers.

Is there any incompetency on the part of a municipal corporation or the inhabitants of a designated part of a State, to exercise all powers of self-government as to local objects, which the legislature may confer, and not prohibited by the State constitution.

In the case of Sybert *vs.* the city of Pittsburg, 1 Wallace, 272, the Legislature of Pennsylvania conferred upon any incorporated city unlimited power to subscribe to the stock of a railway company.

The Supreme Court of Pennsylvania held that not only was a city capable of receiving and exercising such a grant of power, but that by implication it carried the authority to issue bonds for money borrowed for the main object, and this court concurred in the decision.

If this was the case of an individual, seeking to force his way through a supposed weak place, in a contracting circle, that his promise had drawn around him, the answer of the law would be clear and short.

The bond in this case is in due form. It has been exchanged by the city for value. It purports to be authorized by law. That law has been construed, for the parties acted under it; it was declared by the city to be good, and accepted by the lenders as such.

This transaction, when examined by an impartial tribunal, is ascertained to be one that heretofore has had its component parts carefully passed upon and classed amongst the things fundamentally settled. It is a transaction that in past days has grown to maturity and borne its fruit.

The effort now is, to make a new thing out of an old one, and in a very cheap manner, by substituting new words, in the place of past acts.

To do this, it is necessry to rub out time, and to erase all that part of the history of these bonds in which they grew up and came to maturity; and begin with them now as a new thing.

We are dealing here with a corporation, which is an *artificial* person. Is that to be understood in the sense that there is an unreality about a corporation, and therefore its promise, unlike that of a natural person, is an unreal thing.

The one is bound by his promise in good faith; but to the promise of the other no good faith attaches.

Is there any thing so distinguishing between the artificial and the natural person, in the eye of the law, that the rules of justice, made for the one case, must be reversed, when applied to the other?

F. A. DICK.

Of Counsel for Plaintiff in Error.